

Verizon Services Corp.
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Arlington, Virginia 22201

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Jeffrey A. Masoner
Vice President-Interconnection Services



September 21, 2000

Edward W. Kirsch, Esq.
Swidler Berlin Shereff Friedman, LLP
3000 K Street, NW, Suite 300
Washington, DC 20007-5116

Dear Mr. Kirsch:

Verizon New England Inc., d/b/a Verizon Maine, f/k/a New England Telephone and Telegraph Company, d/b/a Bell Atlantic - Maine ("Verizon"), has received your letter stating that, under Section 252(i) of the Telecommunications Act of 1996 (the "Act"), CTC Communications Corp. ("CTC") wishes to adopt the terms (except for the terms governing resale of retail telecommunications services, as set forth in Sections 12.0 to 12.3 thereof, and in Sections X (B) and XII of Exhibit A thereto on pricing) of the [Interconnection Agreement](#) between Global NAPS, Inc. ("GNAPS") and Verizon that was approved by the Maine Public Utilities Commission (the "Commission") as an effective agreement in the State of Maine in Docket No. 98-662 (the "Terms").¹ Additionally, CTC has stated that, notwithstanding anything set forth in the Terms, it will continue to purchase, pursuant to its existing resale agreement with Verizon, dated as of December 1, 1997, as amended July 1, 1999, retail telecommunications services from Verizon for resale by CTC to end users who are not telecommunications carriers. I understand CTC has a copy of the Terms. Please note the following with respect to CTC's adoption of the Terms.

1. By CTC's countersignature on this letter, CTC hereby represents and agrees to the following three points:
 - (A) CTC adopts (and agrees to be bound by) the Terms of the GNAPS agreement for interconnection with Verizon as it is in effect on the date hereof after giving effect to operation of law, and in applying the Terms, agrees that CTC shall be substituted in place of Global NAPS, Inc. and GNAPS in the Terms wherever appropriate.

¹ These "agreements" are not agreements in the generally accepted understanding of that term. Verizon was required to accept these agreements, which were required to reflect then-effective FCC rules and other applicable law.

- (B) CTC requests that notice to CTC as may be required under the Terms shall be provided as follows:

To: Michael H. Donnellan
Vice President, Operations
CTC Communications Corp.
360 Second Avenue
Waltham, MA 02451
Tel: 781-446-8080
FAX: 781-446-1306

and:

Pamela L. Hintz,
CTC Communications Corp.
360 Second Avenue
Waltham, MA 02451
Tel: 781-446-1242
FAX: 781-446-1306

with a copy to:

Edward W. Kirsch, Esq.
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, DC 20007
Tel: 202-424-7877
FAX: 202-424-7645

- (C) CTC represents and warrants that it is a certified provider of local telecommunications service in the State of Maine , and that its adoption of the Terms will cover services in the State of Maine only.
2. CTC's adoption of the GNAPS agreement Terms shall become effective upon the date of filing of this adoption letter with the Commission (which filing Verizon will promptly make upon receipt of an original of this letter countersigned by CTC) and remain in effect no longer than the date the GNAPS agreement Terms are terminated or expire. The GNAPS agreement is currently scheduled to expire on October 1, 2001.

3. As the Terms are being adopted by you pursuant to your statutory rights under section 252(i), Verizon does not provide the Terms to you as either a voluntary or negotiated agreement. The filing and performance by Verizon of the Terms does not in any way constitute a waiver by Verizon of any position as to the Terms or a portion thereof, nor does it constitute a waiver by Verizon of all rights and remedies it may have to seek review of the Terms, or to seek review in any way of any provisions included in these Terms as a result of CTC's 252(i) election.
4. On January 25, 1999, the Supreme Court of the United States ("Court") issued its decision on the appeals of the Eighth Circuit's decision in *Iowa Utilities Board*. Specifically, the Supreme Court modified several of the FCC's and the Eighth Circuit's rulings regarding unbundled network elements and pricing requirements under the Act. *AT&T Corp. v. Iowa Utilities Board*, 119 S. Ct. 721 (1999). Certain provisions of the Terms may be void or unenforceable as a result of the Court's decision of January 25, 1999, the United States Eighth Circuit Court of Appeals' recent decision in Docket No. 96-3321 regarding the FCC's pricing rules, and the current appeal before the U.S. Supreme Court regarding the FCC's new UNE rules. Moreover, nothing herein shall be construed as or is intended to be a concession or admission by Verizon that any provision in the Terms complies with the rights and duties imposed by the Act, the decisions of the FCC and the Commissions, the decisions of the courts, or other law, and Verizon expressly reserves its full right to assert and pursue claims arising from or related to the Terms.
5. Verizon reserves the right to deny CTC's adoption and/or application of the Terms, in whole or in part, at any time:
 - (a) when the costs of providing the Terms to CTC are greater than the costs of providing them to GNAPS;
 - (b) if the provision of the Terms to CTC is not technically feasible; and/or
 - (c) to the extent that Verizon otherwise is not required to make the Terms available to CTC under applicable law.
6. As noted above, pursuant to Rule 809, the FCC gave ILECs the ability to deny 252(i) adoptions in those instances where the cost of providing the service to the requesting carrier is higher than that incurred to serve the initial carrier or there is a technical incompatibility issue. The issue of reciprocal compensation for traffic destined for the Internet falls within this exception. Verizon never intended for Internet traffic passing through a telecommunications carrier to be included within the definition of local traffic and subject to the corresponding obligation of reciprocal compensation. Whatever doubt any party may have had with respect to this issue was removed by the Declaratory Ruling

that the Federal Communications Commission (the "FCC") released on February 26, 1999 which, among other things, "conclude[d] . . . that ISP-bound traffic is non-local interstate traffic."² The FCC also reaffirmed that "section 251(b)(5) of the Act and [the FCC] rules promulgated pursuant to that provision concern inter-carrier compensation for interconnected *local* telecommunications traffic."³ Based on the FCC's Declaratory Ruling (among other things), it is clear that Internet traffic is not local traffic. With this in mind Verizon opposes, and reserves the right to deny, the adoption and/or the application of the provisions of the Terms that might be interpreted to characterize traffic destined for the Internet as local traffic or requiring the payment of reciprocal compensation. If CTC believes that the GNAPS Maine agreement somehow provides reciprocal compensation for ISP-bound traffic, CTC should take note that, pursuant to section 5.7.2.3 of that agreement, Verizon would not be obligated to pay reciprocal compensation for that traffic. The GNAPS Maine agreement is essentially a clone of an agreement between GNAPS and Verizon New York, successor in interest to New York Telephone Company, for the state of New York. In the New York agreement, GNAPS and Verizon New York negotiated the following terms with respect to Internet traffic:

5.7.2.3. The Parties stipulate that they disagree as to whether traffic that originates on one Party's network and is transmitted to an Internet Service Provider ("ISP") connected to the other Party's network ("ISP Traffic") constitutes Local Traffic as defined herein, and the charges to be assessed in connection with such traffic. The issue of whether such traffic constitutes Local Traffic on which reciprocal compensation must [sic] be paid pursuant to the 1996 Act is presently before the FCC in CCB/CPD 97-30 and may be before a court of competent jurisdiction. *The Parties agree that the decision of the FCC in that proceeding, or as [sic] such court, shall determine whether such traffic is Local Traffic (as defined herein) and the charges to be assessed in connection with ISP Traffic.* If the FCC or such court determines that ISP Traffic is Local Traffic, as defined herein, or otherwise determines that ISP Traffic is subject to reciprocal compensation, it shall be compensated as Local Traffic under this Agreement unless another compensation scheme is required under such FCC or court determination. Until resolution of this issue, BA agrees to pay GNAPS Reciprocal Compensation for ISP traffic (without conceding that ISP Traffic constitutes Local Traffic or precluding BA's ability to seek appropriate court

² Declaratory Ruling in FCC CC Docket No. 96-98 and Notice of Proposed Rulemaking in CC Docket No. 99-68 (rel. February 26, 1999), fn. 87. The D.C. Circuit Court has recently asked the FCC to explain more fully its reasoning in arriving at this conclusion in the Declaratory Ruling, but it has not rejected the conclusion. The FCC, moreover, has publicly since reiterated the correctness of its conclusion.

³ *Id.* (emphasis in original).

review of this issue) pursuant to the [New York Public Service] Commission's Order in Case 97-C-1275, dated March 19, 1998, as such Order may be modified, changed or reversed. (emphasis added)

The same section 5.7.2.3 was copied into the GNAPS Maine agreement.

At the time the New York and Maine agreements were signed, GNAPS and Verizon were awaiting the FCC's decision in CCB/CPD 97-30 on the Internet traffic issue. As is clear from section 5.7.2.3, the parties intended that Verizon would be unconditionally obligated to pay reciprocal compensation on Internet traffic only if the FCC (or a court of competent jurisdiction) were to determine that Internet traffic is local traffic. As you know, the FCC subsequently decided to the contrary, finding that Internet traffic is not local, but interstate and interexchange. Therefore, the conditional event in the GNAPS agreement has occurred, with the result that CTC, in adopting the GNAPS agreement Terms, is precluded from receiving reciprocal compensation on Internet traffic.

7. Should CTC attempt to apply the Terms in a manner that conflicts with paragraphs 3-6 above, Verizon reserves its rights to seek appropriate legal and/or equitable relief.

Please sign this letter on the space provided below.

Sincerely,

VERIZON MAINE

Jeffrey A. Masoner
Vice President-Interconnection Services

Reviewed and countersigned as to points A, B, and C of paragraph 1:

CTC COMMUNICATIONS CORP.

(SIGNATURE)

(PRINT NAME)

c: Sonia Lizan-O'Halloran – Verizon